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## Blue whale strike results in reform, not punishment, for Fugro Pelagos

By **FRANK HARTZELL** Staff Writer -  
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The California State Lands Commission last week found its own regulations designed to protect marine mammals so inconsistent and confusing as to be unenforceable.

That was good news for Fugro Pelagos, owner of the 176-foot survey vessel Pacific Star that reported it fatally struck a female blue whale on Oct. 19.

"On behalf of all of us at Fugro Pelagos, we thank ... the California State Lands Commission (SLC) for assessing the facts of the matter and deciding not to revoke our offshore geophysical survey permit. In making such a decision, they recognized that language of the current permit is unclear and could be subject to interpretation," said Fugro Company President David Millar, in a statement issued after the meeting.

State Lands Commission staff had recommended that the company's permit be yanked and that Fugro pay \$13,000 for staff investigatory expenses.

Instead, the commission hashed out an agreement by which the company now agrees to follow the conditions of the permit — as the commission wrongly believed had been happening all along.

"It is now clear that the California State Lands Commission considers hydrographic surveying using only an echo sounder to be an activity covered by the offshore geophysical survey permit. Fugro Pelagos has agreed to comply with this interpretation on the basis that all other permit holders will receive written notification of the State's position and that the State will work with Fugro Pelagos and other stakeholders

in reviewing and modifying the current permit language so that there can be no future misunderstandings about what activities are and are not covered by the offshore geophysical survey permit," Millar stated. The whale bled to death in about half an hour, washing up just south of Fort Bragg.

The entire matter is a gigantic "I told you so" for Steve Sullivan, who has been criticizing these very regulations for being confusing and widely ignored.

Sullivan owns a Fugro rival surveying company. He has harped at state authorities for about five years, saying others should be made to do what his company does, including always having a marine mammal observer on deck and employing a spotter boat.

Sullivan had predicted catastrophe for marine mammals unless regulations became consistent. Prior to the Oct. 19 whale strike, Sullivan not only criticized Fugro, but also state and university agencies for ignoring the regulations designed to protect marine mammals.

At last Thursday's meeting, the State Lands Commission set out to demand those agencies and Fugro all now follow consistent rules.

Sullivan's pleas seemingly fell on deaf ears at the State Lands Commission and the Ocean Protection Council. In fact when Sullivan contended following the whale strike that Fugro was operating without a permit, state and federal officials had vociferously refuted Sullivan's contention.

But technically, Sullivan was right. Fugro never finalized a marine mammal plan required by the permit because they felt it did not apply to any of the work they were doing. Yet, the company kept renewing the incomplete (and thus theoretically invalid) permit, all a demonstration of how meaningless and unintelligible the permit process was.

The marine mammal plan, had it been prepared, would be expected to contain measures that might or might not prevent whale strikes.

Fugro has consistently maintained that the whale killing would likely have happened even if there had been a NOAA-certified marine mammal observer on deck.

"During the hearing, it was noted that State scientists considered this tragic accident unavoidable, and not the result of Fugro Pelagos not following survey permit conditions," Millar said.

"Nevertheless, we were deeply saddened by it. In the decades that the company has been in existence, no incident of this type has ever occurred and we acknowledge the loss that comes with the death of such a large and precious marine animal," Millar said.

Fugro will carry a marine wildlife monitor in the future. Perhaps more importantly, State Lands has launched a process designed to standardize all permits and require more measures to protect marine mammals, as the permitting process originally intended.

At one point, state officials were working on a plan for better protections of marine mammals, but that effort collapsed due to the state budget crisis.

"I am very pleased that the State Lands Commission has finally required the multi-billion dollar international firm, Fugro, to abide by the same regulations to protect marine mammals that us small California survey companies have complied with for years," Sullivan said in a statement after the meeting.

"At their meeting on Dec. 17, the State Lands Commission disclosed that Fugro and a new permit applicant, the California State University at Monterey Bay, have for years been conducting marine surveys without compliance with regulations to protect marine mammals," Sullivan said.

A community effort stripped the whale of its flesh and buried the skeleton so it can be dug up later and displayed.

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